

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

Paul H. Cossette

v.

Case No. 05-cv-328-PB

Mike Johanns, Secretary,  
U.S. Dept. of Agriculture

O R D E R

The United States Forest Service rejected Paul Cossette's application for employment as a Resource Assistant. Cossette challenged the Forest Service's decision both by commencing an administrative challenge under the Veterans Employment Opportunity Act and the Uniformed Services Employment and Reemployment Act, and by filing the current judicial action under the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621, et seq. Cossette lost his administrative action when the Federal Circuit endorsed the Administrative Judge's finding that "Cossette made no showing that he in fact met the basic qualification requirement for the [Resource Assistant] position." Cossette v. Dep't of Agric., 113 Fed. Appx. 398, 401 (Fed. Cir. 2004).

The government has filed a motion for summary judgment arguing that Cossette is collaterally estopped by the Federal Circuit's ruling from contending that he was qualified for the Resource Assistant position. I cannot resolve this question now because it has not been adequately briefed. If the government elects to renew its argument, it shall explain the applicability or inapplicability of the following cases: Kremer v. Chem. Constr. Co., 456 U.S. 461 (1982); Chandler v. Roudebush, 425 U.S. 840 (1976); Baez-Cruz v. Municipality of Comerio, 140 F.3d 24 (1st Cir. 1998); Taylor v. Alexander, 39 F.3d 1192 (10th Cir. 1994) (unpublished); Gergick v. Austin, 997 F.2d 1237 (8th Cir. 1993); Univ. of Tenn. v. Elliott, 478 U.S. 788 (1986); Rosenfeld v. Dep't of Army, 769 F.2d 237 (4th Cir. 1985); Gonsalves v. Alpine Country Club, 727 F.2d 27 (1st Cir. 1984).

The government alternatively argues that Cosette has introduced insufficient evidence to support his contention that he was qualified for the Resource Assistant position. I decline to address this argument until the government has either rebriefed or abandoned its collateral estoppel argument.

Defendant's motion for summary judgment (Doc. No. 39) is denied without prejudice.

SO ORDERED.

/s/Paul Barbadoro  
Paul Barbadoro  
United States District Judge

May 3, 2007

cc: Paul Cossette, pro se  
T. David Plourde, Esq.